

J.C. Watts, Jr.
Chairman
4th District, Oklahoma

House Meets at 10:00 a.m. for Legislative Business

Anticipated Floor Action:

H.R. 2372—Private Property Rights Implementation Act

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H.R. 2372—Private Property Rights Implementation Act

Floor Situation: The House will consider H.R. 2372 as its only order of business today. Yesterday, the Rules Committee granted a structured rule that provides one hour of general debate, equally divided between the chairman and ranking minority member of the Judiciary Committee. The rule makes in order a committee amendment in the nature of a substitute as base text. It also makes in order three amendments, debatable for the amount of time specified and in the order listed below. In addition, the rule waives all points of order against the amendments. The chairman of the Committee of the Whole may postpone votes and reduce the voting time on a postponed vote to five minutes, so long as it follows a regular 15-minute vote. Finally, the rule provides one motion to recommit, with or without instructions.

Summary: H.R. 2372 clarifies current case law regarding the constitutional taking of private property by a federal or local government entity. The intent of the measure is to make it easier for property owners who believe their Fifth Amendment rights have been violated to have their case heard in a federal court. Specifically, the bill addresses two primary elements involved in a “takings” claim: “abstention” and “ripeness.” The bill states that federal courts may not abstain from considering takings cases that involve solely federal claims (that is, claims without reference to state law). In instances where a federal question cannot be resolved without also resolving an unsettled question of state law, the federal court may suspend its final ruling on whether a property was justly taken until a state-level appellate court resolves the issue.

The bill also addresses the “ripeness” of property takings claims. Under current case law, when a property owner challenges the taking of his property in federal court, the plaintiff must show that (1) a federal or local agency issued a “final decision” regarding how the property may be used, and (2) he exhausted all possible local remedies for “just compensation” in state court. Once these points are proven, the case is considered ready, or “ripe,” for consideration in a federal court.

H.R. 2372 clarifies the time when ripeness is reached based on when the agency involved in the property dispute has issued its “final decision” to include the following:

- * **Filing and Denial of Applications.** Landowners must file an application to develop their property, such as building an office tower, prior to breaking ground. If the application is denied with a written explanation describing how the application could be changed and subsequently approved, the property owner must reapply, taking into consideration the recommendations.
- * **Filing a Waiver Request or an Appeal to the Denied Application.** If the initial application is denied, the landowner must then file an appeal to the relevant agency, and also apply for a waiver from the restrictions that the agency imposes on land use. For example, if the office building proposal is rejected because of a building height restriction, the owner may request a waiver of that restriction for his project or appeal the application denial.
- * **Seeking a Remedy Through a Locally-Elected Body.** If local law allows a locally-elected body to review land use denials, the owner must file for an appeal of his land use denial with this entity. If the right to an appeal is denied, the government is considered to have issued its “final decision,” allowing the owner to proceed to federal court to resolve the dispute.

Finally, H.R. 2372 allows landowners to proceed directly to federal court if they can prove that seeking approval of an application, an appeal, or a waiver would be “futile.”

The bill was introduced by Mr. Canady *et al.*; the Judiciary Committee reported the bill by a vote of 14-7 on March 9, 2000.

Views: The Republican leadership has not taken an official position on the measure. President Clinton opposes the bill and has threatened to veto it.

Amendments: As stated above, the rule makes in order the following three amendments, debatable for the amount of time specified and in the order listed:

Mr. Watt and Mr. Conyers will offer an amendment, debatable for 20 minutes, to eliminate from the bill all references to “property.” The purpose of the amendment is to allow individuals with *any* claim relating to constitutional rights—including the right to just compensation—to proceed to federal court once state-court remedies are exhausted. *Staff Contact: Steve Wall (Watt), x5-1510*

Mr. Traficant will offer an amendment, debatable for 10 minutes, to require federal agencies to notify landowners within 14 days of any action that may affect their property rights. *Staff Contact: Dan Blair, x5-5261*

Mr. Boehlert will offer a substitute amendment, debatable for 60 minutes, to strike language in the bill that allows landowners to appeal local land use decisions in federal court. However, it preserves bill language establishing an expedited process for filing suit in federal court over land use disputes with the federal government. Supporters of the substitute assert that, under the bill, federal courts will become involved prematurely in settling land use disputes that are principally local in nature. Opponents contend, however,

that just compensation is a federally-guaranteed civil right, and hence should be enforced by the federal government. *Staff Contact: David Goldston, x5-3665*

Additional Information: See *Legislative Digest*, Vol. XXIX, #6, March 10, 2000.

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